

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

TYRONE MCDUGALD,) 3:06-CV-00623-ECR-RAM
)
Plaintiff,) MINUTES OF THE COURT
)
vs.) DATE: SEPTEMBER 23, 2008
)
C/O KENNETT; C/O MARINO;)
C/O CASNO; LT. POE; and WARDEN)
BACA,)
Defendants.)
_____)

PRESENT: _____ EDWARD C. REED, JR. _____ U. S. DISTRICT JUDGE
Deputy Clerk: _____ COLLEEN LARSEN _____ Reporter: _____ NONE APPEARING
Counsel for Plaintiff(s) _____ NONE APPEARING
Counsel for Defendant(s) _____ NONE APPEARING

MINUTE ORDER IN CHAMBERS

On August 12, 2008, the Magistrate Judge filed a Report and Recommendation (#161) recommending that Defendants' Motion to Dismiss/Summary Judgment (#104) be granted as to Defendant Powe for lack of personal participation and denied as to the other contentions. The Report and Recommendation also recommends denial of Plaintiff's Cross- Claims Motion for Partial Summary Judgment (#152) and further recommends the denial of Plaintiff's Motion for Temporary Restraining Order and a Preliminary Injunction (#144).

Plaintiff filed an objection (#162) and Defendants filed an objection (#164).

The Report and Recommendation (#161) is well taken. **IT IS HEREBY ORDERED** that the Report and Recommendation (#161) is **APPROVED** and **ADOPTED** by the Court.

IT IS, THEREFORE, HEREBY ORDERED that Defendants' Motion to Dismiss/Summary Judgment (#104) is **GRANTED** as to Defendant Powe; Defendants' Motion to Dismiss/Summary Judgment (#104) is **DENIED** in all

other respects. **IT IS FURTHER ORDERED** that Plaintiff's Cross-Claims Motion for Partial Summary Judgment (#152) is **DENIED**. **IT IS FURTHER ORDERED** that Plaintiff's Motion for Temporary Restraining Order and a Preliminary Injunction (#144) is **DENIED**.

Genuine issues of material fact exist as to the amount of force used in both the prison yard and infirmary incidents and whether such force was reasonable under the circumstances. With respect to the Plaintiff's third objection, any presumption resulting from the spoliation of evidence will be addressed at trial.

In response to Plaintiff's Motion (#170) for a copy of his objection to the Report and Recommendation, filed on September 19, 2008, the Clerk shall provide a copy of objection (#162) to Plaintiff.

Plaintiff's Motion for Pretrial Conference (#171) is **DENIED**. The motion is premature.

LANCE S. WILSON, CLERK

By /s/
Deputy Clerk